REMARKS

The Office Action mailed May 10, 2006 has been carefully considered.

Claims 1, 3-5, 9, 11, 12, 16 and 17 are pending and stand rejected.

Claims 1, 9 and 17 have been amended.

Claims 9, 11-12 and 16-17 stand rejected under 35 USC 101 because the claimed invention is allegedly directed to non-statutory subject matter. The Office Action states that in view of the applicants' disclosure, specification page 28, lines 14-22 to page 29, lines 1-2, the medium is not limited to tangible embodiments.

Applicant thanks the Examiner for his observation but respectfully disagrees that the claim is directed to non-statutory subject matter. However, in the interest of advancing the prosecution of this matter, the amendment to the claims suggested by the Examiner has been reviewed and incorporated in-part in independent claim 9. More specifically, the amendment to claim 9 recites "computer-executable program logic, provided from a computer readable medium." No new matter has been added. Support for the amendment may be found at least on page 28, line 16-page 29, line 2, which states "[t]he method and apparatus of this invention may take the form, at least partially, of program code ... embodied in tangible media ...When the program code is loaded into and executed by a machine, such as a computer, the machine becomes an apparatus ... The methods and apparatus of the present invention may also be embodied in the form of program code that is transmitted over some transmission medium, such as over electrical wiring or cabling ...".

The specification, thus, teaches that the program code may be stored on a medium such as a disk and loaded therefrom into a computer or may be loaded into the computer through a transmission medium. Thus the program code is provided from a computer readable medium, whether from the medium or via an electronic transfer. In either case, the program code is a tangible entity and, statutory subject matter.

With regard to claim 17, applicant respectfully disagrees with the statements that the computer program product is directed to non-statutory subject matters. More specifically, the claim recites "the program product includes computer-executable logic provided by a computer-readable medium and which is configured for causing a computer to execute...." The program product thus provided, whether from a tangible medium (CD, etc.) or downloaded over a network, provides a useful and concrete result when executed by the claimed computer.

Accordingly, no amendments have been made to claim 17.

For at least these reasons applicant submits that the reason for the rejection has been overcome and respectfully requests that the rejection be withdrawn.

Claims 1, 3-5, 9, 11-12 and 16-17 stand rejected under 35 USC 102(e) as allegedly being anticipated by Young (USP no. 6,898,681), which is the same reason recited in rejecting the claims in the prior Office Action. The Office Action, in response to the applicant's remarks made in response to the prior Office Action, states, Young teaches "[w]hen the user selects not to write over a data copy, a new or fresh point-in-time copy is created, which stores the updated data and the current or now old point-in-time copy is not overwritten," which teaches the limitation "protecting the data copy from being written over until the update to the copy of production data is performed."

Applicant thanks the Examiner for providing further reasoning for rejecting the claims. However, applicant again respectfully disagrees with and explicitly traverses the reason for rejecting the claims for the same remarks made in applicant's response to the rejection of the claims in the prior Office Action, which are reasserted, as if in full, herein. But, in the interest of advancing the prosecution of this matter, the independent claims have been amended to more clearly state the invention. More specifically, the independent claims have been amended to recite "completing the update to the copy of production data; and unprotecting the data copy after completion of the update." No new matter has been added. Support for the amendment may be found at least in Figures 2 and 8, which illustrate the step of unprotecting the data copy.

Young, as stated in the applicant's prior remarks, discloses a system for providing a copy of data at a point in time that includes a data storage device including a master store arranged to store blocks of data, at least one subsidiary store to store point in time copy data having blocks of data copied from said master store at a particular point in time and a bitmap store associated with each of the subsidiary stores to store data indicating when a data block of the master store differs from a corresponding data block stored in the associated subsidiary store. (see Abstract).

In this case, the Examiner refers to Young protecting the data copy by having a new point-in-time (POT) copy created rather than overwriting the existing point-in-time data copy. Assuming that the selection of a new POT copy created is comparable to the step of protecting, which applicant does not believe to be comparable, Young fails to disclose the step of unprotecting the data. More specifically, if the existing POT copy is selected to be overwritten, then the protection step of the instant invention is not performed. On the other hand, if a new POT copy is selected, no explicit protection step is performed on the existing POT copy, but

rather a new POT copy is created. As no explicit protection step is performed on the existing POT copy, there is no need for an "unprotect" step of the existing POT copy.

It is well recognized that to constitute a rejection pursuant to 35 USC §102, i.e., anticipation, all material elements recited in a claim must be found in one unit of prior art.

Young cannot be said to anticipate the present invention, because Young fails to disclose each and every element recited. More specifically, Young fails to teach an unprotect step assuming that the selection of a new POT copy is comparable to an implicit protection step.

At least for this reason, applicant submits that the rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected for the same reason used in rejecting claim 1. Thus, for the amendments made to these claims, which are similar to the amendments made with regard to claim 1 and for the remarks made in response to the rejection of claim 1, which are also applicable in response, and reasserted, as if in full, herein, applicant submits that the reason for rejecting these claims have been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard the remaining claims these claims ultimately depend from the independent claims, which have been shown to contain subject matter not disclosed by, and, hence, allowable over, the reference cited. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

Accordingly, applicant respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the foregoing, applicant believes that the application is in condition for allowance and respectfully request favorable reconsideration.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at 914 798 8505.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: Aug 9, 2006

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